

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

READY FOR THE WORLD INC.,  
d/b/a READY FOR THE WORLD,

Plaintiff,

Case No. 2:19-cv-10062  
Hon. Denise Page Hood

v.

MELVIN RILEY, JOHN EATON,  
RENEE ATKINS, DANIEL DILLMAN d/b/a  
CURTAIN CALL PERFORMING ARTS,  
JAN MARK LAND, et al.

Defendants.

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**MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY  
INUNCTION AND BRIEF IN SUPPORT**

Plaintiff Ready for the World Inc., ("Ready for the World"), through undersigned counsel and pursuant to Rule 65 of the Federal Rules of Civil Procedure, moves the Court on an emergency basis pursuant to Fed. R. Civ. P. 65(b)(1)(A) and (B) to temporarily and preliminarily restrain Defendants Melvin Riley, John Eaton, Renee Atkins, Daniel Dillman d/b/a Curtain Call Performing Arts, and Jan Mark Land (collectively "Defendants") from further use of Plaintiff's trademark READY FOR THE WORLD ("Mark"), for purposes of live musical performances or music recordings including, but not limited to, any advertisements, solicitations, social media communications,

performances or recordings utilizing the name “Ready for the World”, “Ready for the World featuring Melvin Riley”, “Ready 4 the World” or other name that would infringe upon and dilute Plaintiff’s mark or create customer confusion with respect to the designation of origin of the band or an association with READY FOR THE WORLD.

Plaintiff seeks immediate relief in the form of a temporary restraining order pending a hearing on Plaintiff’s application for preliminary injunction and also moves the Court for entry of such preliminary injunction against Defendants to preserve the status quo and prevent irreparable harm pending a final determination of the merits of Plaintiff’s claims.

As evidenced in Plaintiffs verified complaint, without the entry of a temporary restraining order, Plaintiff will suffer imminent and immediate harm and irreparable injury, loss and damage from the delay required to effect notice as Defendants are now advertising upcoming performances using Plaintiffs trademark, “Ready for the World” and even using pictures of the original band. The upcoming concerts are scheduled for:

1. February 8, 2019 in El Paso, Texas (advertising as “Ready for the World” with photo of the original band) see attached **Exhibit A**,
2. February 9, 2019 in Las Vegas at the Orleans Arena (advertising as “Ready 4 the World”), see **Exhibit B**,
3. February 15, 2019 in San Antonio, Texas (advertising as “Ready for the World” and “Ready 4 the World featuring Melvin Riley and using a picture of the original band) see **Exhibit C**,

4. February 16, 2019 in Phoenix, Arizona (advertising as “Ready for the World” and “Ready 4 the World featuring Melvin Riley” and using a photo of the original band), see **Exhibit D**,
5. March 8, 2019 in Redondo Beach, California (advertising as “Ready 4 the World” ft. Melvin Riley), see **Exhibit E**, and
6. March 16, 2019 in Rio Rancho, New Mexico (advertising as “Ready for the World”), see **Exhibit F**.

This current and ongoing use, advertising and infringement of Plaintiff’s mark constitutes an emergency permitting the Court to redress it via a temporary restraining order. In addition, Plaintiffs risk that notice will itself precipitate adverse action before an order can be issued. MCR 3.310(B)(1).

“The purpose of an injunction is not to remedy past wrongs, but rather to prevent the occurrence of threatened future wrongs, *United States v. W.T. Grant Co.*, 345 U.S. 629,633(1953) (citing *Swift & Co. v. United States*, 276 U.S. 311, 326 (1928)). When a past wrong has already occurred, a court must determine that some “cognizable danger of recurrent violation” exists. *Id.*” *Career Agents Network, Inc., v. Careeragentsnetwork.biz*, 722 F. Supp. 2d 814 (E.D. Mich 2010).

When evaluating a motion for a temporary restraining order (“TRO”), a district court must strictly adhere to the requirements of Local Rule 65.1 which authorizes the Court to issue a temporary restraining order without notice to the adverse party if Fed. R. Civ. P. 65(b)(1) permits an *ex parte* order. “The Court is authorized to issue a temporary restraining order without notice to the adverse party in very limited emergency circumstances when the moving party is threatened with irreparable injury and the injury

is so imminent that notice and a hearing on the application for a preliminary injunction is impractical if not impossible.” *Commodores Entm't Corp. v. McClary*, Case No. 6:14-cv-1335-Orl-37GJK (M.D. Fla. Oct. 9, 2014)

For the reasons more fully set forth in the following Brief, Plaintiff requests that the Court grant Plaintiff requested relief and issue a temporary restraining order against all named Defendants from the use of the READY FOR THE WORLD mark and all variances thereof.

**BRIEF IN SUPPORT OF PLAINTIFFS MOTION FOR A TEMPORARY  
RESTRANING ORDER, AND PRELIMINARY INJUNCTION**

**1. INTRODUCTION**

Ready for the World is an American R & B band from Flint, Michigan, that scored numerous pop, soul, and dance hits starting in the mid to late 1980's.

This case involves Defendants' attempts to generate interest in Defendants Melvin Riley and John Eaton's dormant music career and trade on Ready for the World's good name to obtain bookings, sales, and enrich themselves by improperly associating Defendants' newly formed band with the platinum selling Ready for the World, a group Defendant Melvin Riley withdrew from in 2015.

Plaintiff, Ready for the World Inc., executed a Shareholders Agreement in February 2018 that was endorsed and executed by all members except Defendant Melvin Riley, who refused to sign it. At this time, Plaintiff's manager, Terry Harvey contacted Defendant Melvin Riley and confirmed with him that he had left the group and would no longer perform with Ready for the World.

Plaintiff has a valid trademark in READY FOR THE WORLD ("Mark"). Plaintiff's Mark was first developed and used in 1984 and registered as early as 2010 and has been used continuously by the band in commerce. See attached **Exhibit G**,

Ready for the World has earned a place in the Guinness Book of World records for having a single chart to #1 on four different charts all within the same week. The group has achieved Platinum status with over 5 million albums sold and continues to perform for audiences around the world and record music to this day.

As a result of the foregoing, Plaintiff's Mark and its musical compositions and performances associated therewith are well known and famous. Plaintiff's Mark can be

found used in print media, internet advertising, as well as radio spots in connection with its live performances and recorded music. Moreover, Ready for the World has spent over 30 years performing live shows, recording music and spent countless hours and dollars in establishing and advertising the Mark.

Conversely, Defendants have simply attempted to copy off the success of Ready for the World after Defendant Melvin Riley left the group without expending commensurate time, effort or money. Defendants have created the likelihood of customer confusion by purposefully placing confusingly similar marks into the newly formed bands name and in advertising in a manner that skews the truth of Defendant's Melvin Riley and John Eaton's involvement with the group and its current affiliation or association with Ready for the World.

Defendants Melvin Riley and John Eaton have recently formed a band and has identified it as "Ready for the World", "Ready 4 the World featuring Melvin Riley" and "Melvin Riley and Ready for the World." Defendants Riley, Eaton and Defendant Land have performed, playing the hits identified with Ready for the World without acknowledging that the band is not Ready for the World, and they have used the Mark owned by Plaintiff to market their own band.

The name and associated advertising and identification of Melvin Riley and John Eaton's new band as "Ready for the World" is a transparent attempt to confuse the public and cherry-pick Plaintiff's loyal fans and concertgoers, misinform booking agents and infringe upon and dilute Plaintiff's Mark to enrich Defendants improperly and damage Ready for the World. Defendants' band name and advertising, which prominently

features “Ready for the World” or “Ready 4 the World”, is a thinly disguised ploy designed to improperly infringe upon Plaintiffs Mark.

## **II. TEMPORARY RESTRAINING ORDER ANALYSIS**

"Temporary restraining orders and preliminary injunctions are extraordinary remedies designed to protect the status quo pending final resolution of a lawsuit."

*Richardson v. Wells Fargo Bank, NA.*, No 13-cv-10234, 2013 WL 3367434, at \*2 (E.D. Mich. July 5, 2013). The same factors are considered in determining whether to issue a TRO or a preliminary injunction. *Northeast Ohio Coalition for the Homeless v. Blackwell*, 467 F.3d 999, 1009 (6th Cir.2008). The court must consider the following factors when considering whether to issue a TRO or preliminary injunction: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent an injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) whether the public interest is served by issuance of the injunction. *Id.*; see also *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985). "[T]hese factors simply guide the discretion of the court; they are not meant to be rigid and unbending requirements." *In re Eagle-Picher Indus., Inc.*, 963 F.2d 855, 859 (6th Cir. 1992)." *North Atlantic Operating Company, Inc., v. eBay Seller Dealz for you*, No. 17-10964 (E.D. Mich. May 3, 2017).

Plaintiffs request that this Court issue a temporary restraining order pursuant to the Lanham Act. The Lanham Act provides that:

- (1) Any person who shall, without the consent of the registrant—  
 (a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or

advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or  
 (b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive,  
 shall be liable in a civil action by the registrant for the remedies hereinafter provided. 15 U.S.C. § 1114(1)(a)-(b).

When evaluating a claim brought under the Lanham Act, the Sixth Circuit uses "the same test to decide whether there has been trademark infringement, unfair competition, or false designation of origin: the likelihood of confusion between the two marks." *Audi AG v. D'Amato*, 469 F.3d 534, 542 (6th Cir. 2006) (citing *Two Pesos v. Taco Cabana*, 505 U.S. 763, 780 (1992)). "The touchstone of liability under § 1114 is whether the defendant's use of the disputed mark is likely to cause confusion among consumers regarding the origin of the goods offered by the parties." *Daddy's Junky Music Stores, Inc. v. Big Daddy's Family Music Ctr.*, 109 F.3d 275, 280 (6th Cir. 1997). The court must consider the following factors in determining whether there is a likelihood of confusion: (1) the strength of plaintiff's mark; (2) relatedness of the goods; (3) similarity of the marks; (4) evidence of actual confusion; (5) marketing channels used; (6) likely degree of purchaser care; (7) defendant's intent in selecting the mark; and (8) the likelihood of expansion of the product lines. *Wynn Oil Co. v. Am. Way Serv. Corp.*, 943 F.2d 595, 599-600 (6th Cir. 1991). No one factor is dispositive; "a plaintiff need not show that all, or even most of the factors listed are present in any particular case to be successful." *Id.* (internal citation omitted). "A finding of irreparable injury ordinarily follows when a likelihood of confusion or possible risk to reputation appears. *Id.* at 608 (internal citations omitted).

Plaintiff seeks immediate relief in the form of a temporary restraining order pending a hearing on Plaintiff's application for preliminary injunction and also moves the Court for entry of such preliminary injunction against Defendants to prevent irreparable harm pending a final determination of the merits of Plaintiff's claims.

As evidenced in Plaintiffs verified complaint, without the entry of a temporary restraining order, Plaintiff will suffer imminent and immediate harm and irreparable injury, loss and damage from the delay required to effect notice as Defendants are now advertising upcoming performances on February 8, 9,15, 16 and March 8 and March 16, 2019, using the names, "Ready for the World", "Ready 4 the World" and other slimier names (see **Exhibits A – F**). Defendants continue their illegal use of Plaintiff's Mark with dirty hands, despite being put on notice through cease and desist letters, and with the knowledge that the Mark was owned by Ready for the World Inc. Defendants even went so far as to use a picture of the original band.

This current and ongoing use, advertising and infringement of Plaintiff's Mark constitute an emergency permitting the Court to redress it via a temporary restraining order. In addition, Plaintiffs risk that notice will itself precipitate adverse action via social media and communication with concert promoters and booking agents before an order can be issued. MCR 3.310(B)(1).

In the Sixth Circuit, when determining whether to issue a temporary restraining order or preliminary injunction, the Court must consider four factors:

(1) the likelihood that the party seeking the preliminary injunction will succeed on the merits of the claim; (2) whether the party seeking the injunction will suffer irreparable harm without the grant of the extraordinary relief; (3) the probability that granting the

injunction will cause substantial harm to others; and (4) whether the public interest is advanced by the issuance of the injunction. *Washington v. Reno*, 35 F.3d 1093, 1099 (6th Cir.1994). These four factors “are factors to be balanced, not prerequisites that must be met.” *Hamad v. Woodcrest Condo. Ass’n*, 328 F.3d 224, 230 (6th Cir. 2003). Given the facts above and discussed further below, Plaintiff can satisfy these legal requirements.

#### **A. Substantial Likelihood of Success on the Merits**

##### **(1) Success of Plaintiff’s Lanham Act claims.**

The Lanham Act prohibits use of a mark that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities." 15 U.S.C. § 1125(a). In order to prevail on its trademark infringement and unfair competition claims, Plaintiff must establish that Defendant's actions create a likelihood of confusion regarding the origin of the goods or services offered by Plaintiff and Defendant. *See Therma-Scan, Inc. v. Thermoscan, Inc.*, 295 F.3d 623, 629 (6th Cir.2002), citing *Daddy’s Junky Music Stores, Inc. v. Big Daddy’s Family Music Ctr.*, 109 F.3d 275, 280 (6th Cir.1997) ("The touchstone of liability under § 1114 is whether the defendant's use of the disputed mark is likely to cause confusion among consumers regarding the origin of the goods offered by the parties.").

There is a substantial likelihood of success on the merits on Plaintiff’s Trademark infringement claims. Under the Lanham Act, a defendant is liable for infringement, if, “without the consent of the registrant” he or she uses in commerce any reproduction,

counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive. 15 U.S.C. sec. 1114(1)(a).

a. Use without consent.

In this instance, there can be no dispute that Defendants have used Plaintiff's Mark without the consent or authorization of Plaintiff. Further, Plaintiff's Mark is a registered Mark, No. 3,820,855, and has been used "in commerce" since 1985. Defendants have improperly used the Mark on its website, Facebook, other social media accounts, and through a performance at the BAL theater identifying itself as "Ready for the World." In addition, Defendants are advertising upcoming performances using Plaintiffs' Mark "Ready for the World" directly and in various similar forms.

"To evaluate the likelihood of consumer confusion in a Lanham Act trademark claim, "a party proves trademark infringement by showing (1) that it owns the mark, (2) that the infringer used the mark in commerce without authorization, and (3) that the use of the alleged infringing trademark is likely to cause confusion among consumers." *Wigs for Kids of Michigan v. Wigs 4 Kids of Michigan, Inc. d/b/a/ Wigs 4 Kids Wellness Center & Salon, et al.*, No. 17-11471, United States District Court, E.D. Michigan, Southern Division, December 21, 2017 and *Coach, Inc. v. Goodfellow*, 717 F.3d 498, 502 (6<sup>th</sup> Cir, 2013). The touchstone of liability under sec. 1114 is the last factor, whether the defendant's use of the disputed mark is likely to cause confusion. *Daddy's Junkie Music Stores, Inc. v. Big Daddy's Family Music Ctr.*, 109 F.3D 275, 280 (6<sup>th</sup> Cir. 1997).

“When members of a band dispute ownership of a mark associated with the band, courts have found that members who remain active and associated with the band have better title to the mark than those who do not. See *Robi v. Reed*, 173 F. 3d 736, 740 (9<sup>th</sup> Cir. 1999). The *Robi* court held that a founding member who remained and continuously performed with the band had better rights to the mark and could use the mark ‘to the exclusion’ of the founding member who had left the band. *Id.* (“When Robi left the group, he took no rights to the service mark with him. Rather the mark remained with the original group.”) Defendant no longer has a valid claim to ownership over the Mark(s). See *Robi*, 173 F. 3d at 740. Rather the band members who remained after Defendant left have prevailing ownership because they “maintained continuity with the group and [have] been in a position to control the quality of services” of the Mark(s) associated with the band name.” See *Id.* (“*Commodores Entertainment Corporation v. Thomas McClary; and Fifth Avenue Entertainment, LLC.* (August 19, 2014 Order, Dalton, J.)

After Defendants Riley and Eaton left the band, it was the original members of Ready for the World who stayed with the group and continued to control the nature and quality of the Mark.

#### b. Consumer Confusion

The Lanham Act prohibits use of a mark that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities." 15 U.S.C. § 1125(a). In order to prevail on its trademark infringement and unfair competition claims Plaintiff must establish that of the goods or services offered by Plaintiff and Defendant. See *Therma-Scan, Inc. v.*

Thermoscan, Inc., 295 F.3d 623, 629 (6th Cir.2002), citing Daddy's Junkt Music Stores, Inc. v. Big Daddy's Family Music Ctr., 109 F.3d 275, 280 (6th Cir.1997) ("The touchstone of liability under § 1114 is whether the defendant's use of the disputed mark is likely to cause confusion among consumers regarding the origin of the goods offered by the parties.").

To evaluate likelihood of consumer confusion in a Lanham Act trademark claim the Sixth Circuit has developed an eight fact-intensive factors review, called the *Frisch factors*. See, e.g. *Frisch's Restaurants, Inc. v. Elby's Big Boy, Inc.*, 670 F. 2d 642, 648 (6<sup>th</sup> Cir. 1982); *Gibson Guitar Corp. v. Paul Reed Smith Guitars, LP*, 423 F. 3d 539, 548 (6<sup>th</sup> Cir. 2005).

The eight factors for evaluating "likelihood of confusion" are: (1) strength of the plaintiff's mark, (2) relatedness of the goods involved, (3) similarity of the marks, (4) evidence of actual confusion, (5) marketing channels used, (6) likely degree of purchaser care, (7) defendant's intent in selecting a mark, and (8) likelihood of expansion of product lines. *Elby's Big Boy* 670 F.2d at 648. Not all of these factors will be relevant in every case, and in the course of applying them, "[t]he ultimate question remains whether relevant consumers are likely to believe that the products or services offered by the parties are affiliated in some way." *Therma-Scan*, 295 F.3d at 630, citing Homeowners Group, Inc. v. Home Mktg. Specialists, Inc., 931 F.2d 1100, 1107 (6th Cir.1991).

Accordingly, the Court will only consider those factors that are most relevant to the present case.

Consumers have confused the platinum recording group 'Ready for the World' with "Ready for the World featuring Melvin Riley" and or "Ready 4 the World.

Confusion is likely to continue without because: (1) Plaintiffs' mark is a "famous mark" as defined in sec. 43(c)(1); (2) Defendants band names "subsume(s) [Plaintiff's] mark within their titles, often using Plaintiffs exact mark; (3) the bands perform similar live music and the bands appeal to the same fan base and venues; (4) there is actual confusion as evidenced by the correspondence between promoters and Defendant Riley, (5) the bands advertise in the same mediums and on the same social media platforms and advertise using the same or a similar name; (7) Defendants intend to cause confusion so as to "pass-off" their services and performances as those of Plaintiff even after being put on notice of their infringing actions; and (8) Plaintiffs are still touring and releasing music under the READY FOR THE WORLD mark.

Passing off "occurs when a defendant misrepresents his own goods or services as someone else's." *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S., 23, 28 b.l, 123 S. Ct. 2041, 156 L. Ed. 2d 18 (2003). Defendants were well aware of Plaintiff's Mark and have a malicious intent to use the Mark to increase exposure and marketability for their new band from the use of Plaintiff's Mark and reputation.

As pled, Plaintiff has alleged that it owns a trademark, that Defendants have infringed on that mark without authorization, and that the infringing mark has already caused several instances of confusion. One notable point of confusion occurred in October of 2018, when Defendant Melvin Riley emailed several promoters and the Sycan Casino saying that he "tours under the name "Ready 4 the world featuring Melvin Riley.... so that promoters know if I am on the show or not...and many have gone to the show expecting me to perform..." In response, Steve Seiden of Yapsody Entertainment stated that "if there was going to be a lineup change...we should have been consulted.

Now I have to tell the casino about this and I don't think they're going to be particularly happy. It could hurt the relationship between the companies."

There is likelihood that consumers would confuse Platinum recording artists "Ready for the World", with "Ready for the World featuring Melvin Riley" and/or "Ready 4 the World" because: (1) Defendants band name subsumes Plaintiffs Mark within its title, (2) the bands perform similar live music and advertise using the same or a similar name and mediums, using the internet, booking agents, concert venues, identical marketing channels and (3) target the same audiences for their performances and recordings and the bands appeal to the same fan base. Ready for the World Inc., has a valid trademark in "Ready for the World" which is inherently distinctive and/or has established secondary meaning as evidenced by the United States Patent and Trademark Office Registration number 3,820,855. Further, the musical group "Ready for the World" has continually and actively used this name in commerce and in connection with live and recorded music since 1985. Ready for the World is a strong Mark entitled to full protection by this Court.

(2) Success of Plaintiff's Trademark dilution claim.

The Sixth Circuit recently adopted the Second Circuit's test for establishing dilution: (1) the senior mark must be famous; (2) it must be distinctive; (3) the junior use must be a commercial use in commerce; (4) it must begin after the senior mark has become famous; and, (5) it must cause dilution of the distinctive quality of the senior mark. *V Secret Catalogue, Inc. v. Moseley*, 259 F.3d 464, 468-69 (6th Cir.2001), citing *Kellogg Co. v. Exxon Corp.*, 209 F.3d 562, 577 (6th Cir. 2000), citing *Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208 (2d Cir.1999). For the

reasons already stated, Plaintiff's mark is famous and distinctive, and the Defendants have used it commercially in commerce. Furthermore, Defendants do not contest that they began using the mark after it became famous.

3. Substantial Likelihood of success on Plaintiff's Michigan's Consumer Protection Act Claim.

The Michigan Consumer Protection Act makes illegal "unfair, unconscionable, deceptive methods, acts or practices in the conduct of trade or commerce" which is defined in MCL 445.903(1)(kk) as "advertising or conducting a live musical performance or production in this state through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group."

In *Wynn Oil Co. v. American Way Serv. Corp.*, 943 F.2d 595, 604 (6th Cir.1991), plaintiff brought trademark infringement and unfair competition claims under federal trademark law as well as under Michigan common law. In determining the federal trademark claims, the district court analyzed plaintiff's claims under the eight-factor test set forth by the Sixth Circuit to determine whether there was a "likelihood of confusion" among competitor's use of contested marks. *Id.* at 599-604 (citing *Frisch's Restaurants v. Elby's Big Boy of Steubenville, Inc.*, 670 F.2d 642, 648 (6th Cir.), cert. denied, 459 U.S. 916, 103 S. Ct. 231, 74 L. Ed. 2d 182 (1982)). After analyzing the federal trademark claims, the district court turned to the state common law unfair competition claim and determined that the same factors used to decide plaintiff's federal trademark infringement claim would apply. Although the Michigan courts have not articulated an eight-part analysis per se, it is true that they have used similar criteria to decide unfair competition issues. *Michigan Business Torts* at § 5.6 (citing *Thrifty Acres, Inc. v. Al-Naimi*, 119 Mich.App. 462, 326 N.W.2d 400 (1982); *220 Bagley Corp. v. Julius Freud Land*

*Co.*, 317 Mich. 470; 27 N.W.2d 59 (1947)). In reviewing the district court's decision to analyze the state law claim under the same factors as the federal claim, the Sixth Circuit noted that "it is most likely that the Michigan Supreme Court would evaluate a common law claim of unfair competition under the eight factors identified earlier." *Wynn*, 943 at 605.

Defendants are using the READY FOR THE WORLD mark in connection with the exact same type of live musical performances as those offered by Plaintiff. They are intentionally palming off or passing off their band and/or performances as those of "Ready for the World" or someone that is associated or affiliated with "Ready for the World", and in so doing have intentionally advertised live musical performances through the use of false, deceptive, or misleading affiliation, connection, or association.

**B. Immediate Irreparable Harm and injury.**

The Court is authorized to issue a temporary restraining order without notice to the adverse party in very limited emergency circumstances. *See Fed. R. Civ. P 65(b)*...a motion for temporary restraining order must be supported by allegations 'not only that the moving party is threatened with irreparable injury, but that such injury is so imminent that notice and a hearing on the application for preliminary injunction is impractical if not impossible'". *Commodores Entertainment Corporation v. Thomas McClary; and Fifth Avenue Entertainment, LLC. (August 19, 2014 Order, Dalton, J.)* Plaintiff seeks immediate relief in the form of a temporary restraining order pending a hearing on Plaintiff's application for preliminary injunction. Plaintiff requests this immediate relief to prevent the irreparable harm that will be caused by Defendants

upcoming shows, concerts and their advertising on broadcast media, print media and social media, pending a final determination of the merits of Plaintiff's claims.

As evidenced in Plaintiffs verified complaint, without the entry of a temporary restraining order, Plaintiff will suffer imminent and immediate harm and irreparable injury, loss and damage from the delay required to effect notice as Defendants are now advertising upcoming performances on February 8, 9,15, 16 and March 8 and March 16, 2019, using the names, "Ready for the World", "Ready 4 the World" and other slimier names (see **Exhibits A – F**). Defendants continue their illegal use of Plaintiff's Mark with dirty hands, despite being put on notice through cease and desist letters, and with the knowledge that the Mark was owned by Ready for the World Inc.

This current and ongoing use, advertising and infringement of Plaintiff's Mark constitutes an emergency permitting the Court to redress it via a temporary restraining order. In addition, Plaintiffs risk that notice will itself precipitate adverse action via social media and communication with concert promoters and booking agents before an order can be issued. MCR 3.310(B)(1).

Once a plaintiff establishes a likelihood of success on the merits of a trademark infringement claim, there is a presumption of irreparable harm. *Tally-Ho*, 889 F. 2d at 1029 (citing *Processed Plastic Co. v. Wamer Commc'n*, 675 F. 2d 852, 858 (7<sup>th</sup> Cir. 1982) "infringement by its by its nature causes irreparable harm.").

**C.     The injury to Plaintiff From Defendants Misconduct Far Outweighs Any Impact that an Injunction May Cause Defendants.**

The risk to the reputation and goodwill associated with "Ready for the World" and their famous Mark outweighs any harm Defendants may face should the requested injunction issue. The threatened harm to the Plaintiff is more severe than the potential

harm of injunctive relief to the Defendants. Plaintiffs could lose thousands of dollars as well as suffer permanent damage to their reputation should this Court not issue a temporary restraining order considering all of the performances Defendants have scheduled in the next few months are being advertised and promoted using Plaintiff's Mark verbatim as "Ready for the World" or similar variations such as "Ready 4 the World." Defendants continued use of Plaintiffs Marks would create a great risk of the destruction of many years of hard work and effort Ready for the World Inc. has undertaken in promoting and cultivating their band and the Mark

Defendants will not suffer any legitimate hardship if a temporary restraining order or preliminary injunction is issued because they have no legal right to use Plaintiff's Mark to compete with Plaintiff in the marketplace.

**D. Enjoining Defendants from Further Infringement and Confusing Advertising Will Serve the Public Interest.**

The public has an interest in not being misled as to the origin, source, or sponsorship of trademarked items. *See Nike, Inc. v. Leslie*, 227 U.S.P.Q. 574, 575 (1985) "[A]n injunction to enjoin infringing behavior serves the public interest in protecting consumers from such behavior."). Here, Plaintiff has demonstrated that Defendants' band name, social media accounts, advertising and live performances have misled consumers into believing they were "Ready for the World" or were approved by, or affiliated with "Ready for the World", when they were not. The public and audiences should be fully aware that when they purchase a ticket to see Defendant's Melvin Riley and John Eaton perform that they are not seeing platinum recording artist "Ready for the World."

Further, preventing confusion and stopping the perpetration of infringement during the pendency of litigation surely serves the public interest. The public interest would be served by the entry of a temporary restraining order and an injunction, which would immediately prevent further confusion of customers from occurring. It is also in the public interest to avoid inevitable confusion that may result from trademark infringement. Accordingly, this factor weighs in favor of Plaintiff and the Court should grant the requested relief.

### **III. BOND**

Federal Rule of Civil Procedure 65(c) provides that a temporary restraining order or preliminary injunction may be issued only if the applicant gives security in an amount determined by the court. But “the rule in [the Sixth Circuit] has long been that the district court possesses discretion over whether to require the posting of security.” *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995).

Neither a temporary restraining order nor a preliminary injunction poses any financial risk to Defendants who will simply be enjoined from using Plaintiffs Mark while this Court determines the merits of Plaintiff claim. Accordingly, Plaintiff respectfully request that this Court waive the bond requirement or, alternatively, set bond in a nominal amount.

### **V. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court immediately enjoin all Defendants from further use of any mark, trade name, label, form of advertisement, social media communication, announcement, or performance

notification, the same as or similar to “Ready for the World” including, but not limited to, using the band name “Ready for the World”, “Ready for the World featuring Melvin Riley”, “Ready 4 the World”, “Melvin Riley is Ready for the World”, or any other advertisements that infringe upon and dilute Plaintiff’s Mark or create customer confusion with respect to the designation of origin of the advertisement or mark used therein.

**CERTIFICATION PURSUANT TO RULE 65(b)(1)(B) OF THE FEDERAL  
RULES OF CIVIL PROCEDURE**

Ready for the World has not attempted to contact the Defendants to notify them of this motion for temporary restraining and, preliminary injunction. Ready for the World Inc., fears that, if notified, the Defendants will take immediate actions that are further harmful to Plaintiff’s Mark in the media, including, Facebook, Instagram, Twitter, websites or send email “blasts” to booking agents and concert promoters.

Respectfully Submitted,

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